

## A LINGERING COUGH

The cough that holds on in spite of all remedies needs energetic and above all, thorough treatment. A mere cough mixture won't do. Root out the cold that causes the cough.

How? Scott's Emulsion. Why Scott's Emulsion?

Because it stops the irritation, soothes the tissues and heals the affected membranes. When? Right away. Scott's Emulsion begins to help with the first dose.

People who have used Scott's Emulsion will not be satisfied with any of the numerous substitutes that are offered in the form of wines, extracts, cordials, etc. When life and health are at stake it is unwise to experiment with unknown and untried preparations.

We'll send you a sample free upon request. SCOTT & BOWNE, 409 Pearl Street, New York



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A full new assortment of the celebrated

HEINZ  
"57 Varieties"

Among the favorites are:

Sweet Pickles  
Baked Beans  
India Relish  
Tomato Soup  
Tomato Catsup  
Lime Meat  
Tomato Chutney  
Apple Butter  
Mustard Dressing

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FLORIST

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Hawaii's Leading Singing Orchestra.  
Charles Hopkins, Jr., Manager. Headquarters: Hawaiian News Co. Tel. Main 384 and Main 294. After 5 p. m., Tel. Black 261.

Old Cameras  
Made New

A new contrivance has just been invented by which you can use films in any camera originally designed for plates, no matter what make the camera is.

It Costs Only \$1.50 for 4x5  
1.00 for 3 1/2 x 4 1/2

The films are made by Eastman Kodak Co. and the loading is even more simple than putting the film in a kodak. Loads in daylight and you can focus each picture separately if you desire.

A stock now on hand at  
HONOLULU PHOTO SUPPLY CO.  
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Greatly enlarged to accommodate our many patrons.  
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"Coffee like your mother makes."

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LADIES' UNDERWEAR.  
Dresses made to order. Sewing guaranteed. If the stitches break I will repair without extra charge.

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Contractor for Stone and Cement Work.  
Prices: No. 2, 1 cubic yard, \$1.70; No. 3, 1 cubic yard, \$1.90; No. 4, 1 cubic yard, \$2.05. Delivered to any part of the city. Emma Hall, corner Beretania and Nuuanu. Phone Blue 1211.

NO PROBATE  
COURT HERE

Point Decided in  
the Parker  
Case.

Demurrer Overruled and  
Five Days Given to  
Answer.

Constitutional Question Is Mooted.  
Big Batch of Appeals.

Judge Gear yesterday rendered a decision overruling the demurrer to the amended petition of J. S. Low, as next friend of Annie T. K. Parker, a minor, to remove A. W. Carter as guardian. The guardian is given five days in which to answer the complaint. In his conclusion the Judge says:

"It seems to me that here, as in Florida and New Jersey, where the statute prescribes no particular mode of procedure, no such nicety in pleading is required as is required in a bill in equity."

The first question considered was that of jurisdiction, the demurrer having objected that the petition and motion purported to be brought before a Circuit Judge sitting in probate and that no Judge or Court of the First Circuit sitting in probate had jurisdiction to remove a guardian; also "that a proceeding before a Judge sitting in probate to remove a guardian is an improper proceeding in that the proper method of procedure for the removal of guardians is before a Judge sitting in equity."

Stating the case the court says: "The claim of counsel for the guardian is that, the Legislature of 1903 having by Act 16 of the Session Laws of 1903 amended the 'Act relating to guardians and wards,' by striking from the various sections of that Act the words 'of probate' and 'court' wherever they occur and by inserting in lieu of the word 'court' where so stricken out the word 'Judge,' the jurisdiction of the Probate Court over guardians and wards is thereby taken away."

"Counsel have cited many cases to the effect that probate courts are courts of statutory and limited jurisdiction and have only the powers conferred upon them by statute. They contend that, as the statute has been amended by striking out all reference to the 'Probate Judge' and the 'Probate Court,' the jurisdiction over guardians and wards reverts to the court of chancery, and that now chancery alone has jurisdiction."

Judge Gear considers the jurisdiction conferred upon the probate court before the amendment of the statute, "for the statute did not of itself create or confer jurisdiction upon such a court, unless by implication if that were possible." He finds that before the passage of the Organic Act the Legislature established in each of the Judicial Circuits a court styled the Circuit Court, giving all such courts and their judges a variety of powers, among others "to grant probate of wills, to appoint administrators and guardians," etc., on which he says:

"I have been unable to find any statute which either creates or confers jurisdiction on any court known as the 'Probate Court,' or any Judge styled the 'Probate Judge.' On the contrary, jurisdiction of all matters, which in over forty of the States is conferred on probate courts, is given to the 'Judges of the several Circuit Courts' who have 'power at chambers' to hear and determine such matters."

CURIOUS SITUATION.  
"I have been greatly surprised to find this condition of things, as many questions have been heretofore submitted for decision which involved the determination as to whether or not the so-called 'Probate Court' or a 'Court of Equity' had jurisdiction in the premises. The courts have heretofore proceeded upon the assumption that there was a court of probate here and this has never been questioned up to the present time so far as I know. That this should continue is not a matter of surprise, for many of the statutes have referred to the 'Probate Judge' and 'Probate Court.'"

Some of these statutes are quoted, also many Supreme Court decisions in which the same terms are used. Judge Gear then proceeds to remark: "But now that the jurisdiction of the 'Probate Court' is asserted to have been lost by this amendment to the statute in question, the question of the 'establishment' and the very existence of such a court is necessarily involved, for if there had been and is a Probate Court then the amendment to the statute becomes of great importance. The existence of such a court, however, cannot be proved by mere reference to it in a statute or a decision of the Supreme Court. There must be a statute creating such a court and conferring jurisdiction upon it before it can be judicially determined that the passage of a statute has deprived it of jurisdiction over any matter. This I have been unable to find and counsel, at the request of the court, failed to point it out. The only statute conferring jurisdiction over the matters in question gives the jurisdiction to the

Judges of the several Circuit Courts at chambers."

## NO PROBATE COURT.

The decision elaborates the foregoing proposition to show that, without probate judges or courts, the Circuit Judges are fully empowered to hear and determine all matters of probate. It is mentioned that there is no "equity division" in our judiciary system. "Prior to the passage of the amendment to the statute relating to guardians," the Judge says, "it was the same Judge who was given the jurisdiction to hear equity matters that heard probate matters. Under the statute as it stood all proceedings were properly brought before the Judge of the Circuit Court and should have been addressed to him. Under the statute as it now stands exactly the same mode of procedure should be followed. The amendment has no other effect than eliminating unnecessary and misleading words, and making the statute correctly describe the Judge having jurisdiction in such matters by referring to him simply as Judge."

## AN OLD LAW.

It is pointed out that as long ago as 1863 practically the same law was construed by the Supreme Court, when its Judges had the jurisdiction now exercised by Circuit Judges, on a motion to order an executor to give security or pay the money of the estate into court. Where it was objected that the remedy sought was only obtainable in a court of equity, the Supreme Court said:

"It is argued, and I think with great force, that under a fair construction of this provision this court possesses all the power that a court of equity could exercise in the premises. Nay, I conceive even more, for while a court of equity might, in a case calling for that species of relief, appoint a receiver, this court could remove an executor appointed by will, and appoint another in the shape of an administrator cum testamento annexo, which a court of equity could not do."

The Hawaiian decision is further quoted to the effect that under the Civil Code—of which the present law is almost a copy—the Hawaiian probate courts had always claimed and exercised a much larger jurisdiction than the English ecclesiastical courts, in fact having the same powers as were "generally exercised by probate courts in the several States of the North American Union." Further, it was held in the same decision that: "Full power is invested in the Supreme Court so to regulate proceedings in probate courts as to effectuate all their powers, and to promote justice between parties litigant before those courts. And I see no reason why a court of probate may not afford equal facilities with a court of equity."

## LEGISLATURE MAKES COURTS.

It is observed that the functions relative to adoption of children, etc., do not constitute an "Orphans' Court" or a "Surrogate Court," and that to grant a writ of habeas corpus did not make a special court. All courts must be created by law. Neither the trial court nor the Supreme Court can create them, but they are solely creatures of legislative enactment. From all this Judge Gear is "clearly convinced that there is not in this jurisdiction such a court as a Probate Court, and that all jurisdiction in probate and equity matters is in a Judge of the Circuit Court simply as such Judge."

## CONSTITUTIONAL POINT.

Attention is called to a point not raised by counsel, which the court thinks may be a "grave constitutional question." This is that the Organic Act vests the judicial power of this Territory in the Supreme Court, the Circuit Courts and such inferior courts as were or might be established by the Legislature. For some reason it omits all mention of the Circuit Judges. "Upon this point," the court says, "there is an interesting case arising under a similar constitutional provision in California." Judge Gear does not feel called upon to decide the question involved in this provision of the Organic Act.

## CAUSE OF ACTION.

Having concluded that he has jurisdiction, Judge Gear briefly considers the objections in the demurrer as to there not being facts in the petition to constitute a cause of action. A Massachusetts case is quoted where a complaint was held sufficient which merely stated that the respondent was an "unsuitable person to act as such guardian." Also a Florida case is cited where it was held sufficient that the court found it had jurisdiction of the subject matter.

## FATTENING THE CALENDAR.

Appeals have been sent up from the District Court of Honolulu in the following cases:

Chun Lo Jar, sentenced to nine months at hard labor for stealing a revolver.  
Wm. McKinley, H. Kueby, C. F. England and W. C. Achi, fined \$10 and costs each for gambling.

Asaka, fined \$10 and costs for assault and battery.

Woods & Sheldon vs. F. K. Makino. Judgment for plaintiff for \$25.65.

Ah Kim vs. Honolulu Rapid Transit Co., Ltd., and Hustace-Peck Co., Ltd. Damages found against Hustace-Peck Co. for \$266.70 including costs, on account of this defendant's wagon injuring plaintiff while he was standing on the footboard of an electric car.

Emmett & Co., Ltd., vs. Kapiolani Estate, Ltd. Judgment for plaintiff for \$314.54.

A. G. Correa vs. Manuel Tavares Verdinho. Judgment for defendant with costs in suit for balance of attorney's fee of \$50. The defense was an alleged bargain that the fee would be \$25 if the case ended in the District Court and \$50 more if it went up on appeals. A nolle prosequi was entered, ending the case.

Verdinho was charged on December 1, 1901, with shooting his wife in the leg. His son retained Correa, who with M. G. Silva went to the house of the disturbed family to arrange about the fee.

Chung Tong Chung vs. Luke Mong Wa. Judgment for plaintiff for \$156.50.

Whitney & Marsh, Ltd., vs. Elizabeth K. Pratt. Judgment for plaintiff for \$66.45.

K. Tanaka vs. R. Tanaka, defendant, and K. Kimoto, garnishee. Judgment for plaintiff for \$113.63.

Luke Mong Wa vs. Lee Sing alias Yee Wo. Judgment for plaintiff for \$90.62.

Jas. L. Holt, assessor of taxes, vs. Manuel S. Perry. Judgment for plaintiff for \$82.75.

Hop Kee vs. J. P. Mendola. Judgment for plaintiff for \$147.62.

Manuel de Silva vs. Lum Hee Chang. Judgment for plaintiff for \$222.40.

Bancroft, Whitney Co. vs. Emmett

## YES OR NO?

Honolulu People Are Respectfully Asked to Answer These Questions.

Is there anything in the evidence of one's senses?

Is there anything in the testimony of one's friends?

Can reliance be placed upon statements from people we know?

Are the opinions of local citizens of any greater moment than those of strangers?

Would you sooner believe people living in some far-away place than residents of your own city?

We think not! For home proof can easily be investigated.

Mr. W. J. Maxwell of this town, Trustant officer, writes thus: "I suffered with a horrible pain in the small of my back (an almost invariable symptom of kidney trouble) for a number of years. I was advised to take some of Doan's Backache Kidney Pills, and following the suggestion, I went to the Hollister Drug Co.'s store, Fort Street, and got some of these. Having taken them, they relieved me straight away, and, as I may say, the best and in fact the only cure for backache. I have mentioned the virtue of this wonderful remedy to several persons, among whom is my friend, Mr. Frank Metcalf, who found relief, and he is now a firm believer in Doan's Backache Kidney Pills."

Doan's Backache Kidney Pills are sold by all chemists and storekeepers at 50 cents per box, six boxes \$2.50, or will be mailed on receipt of price by the Hollister Drug Co., Honolulu, wholesale agents for the Hawaiian Islands.

May. Judgment for defendant with costs in suit for \$181.30.

P. H. Burnette vs. Blanche C. Walker and John F. Bowler. Judgment for plaintiff for \$244.54.

Chung Sen vs. Ng See Fook, defendant, and W. H. Crawford, garnishee. Judgment for plaintiff for \$87.74.

## COURT NOTES.

The late Hugh C. Reid's estate, as shown by David Dayton, administrator, in his inventory to consist of a Luso street leasehold at a rental of \$120 a year and taxes, the lease to expire July 1, 1912, also pattern maker's tools, household effects and cash deposits amounting to \$451.18.

Defendants in the case of J. M. Monsarrat vs. Makanoanoa Pihukahuhi will move before Judge Robinson tomorrow to have a day certain set for the trial.

MURPHY WANTS A  
GO AT HUIBUI

Honolulu, August 24th, 1904.

Editor Advertiser: I would like you to put in a challenge in your sporting column for I, Tim Murphy, stating that I will undertake to stop Bill Huihui inside of six rounds at catch weights. I would also like you to state I cannot make 147 pounds to fight him as he wanted. That is the best I will do. I will be obliged if you will insert the same.

Yours truly,  
TIM MURPHY.

## THE WORRIED WOMEN.

They say men must work and women must weep; but alas, in this too busy world women often have to work and weep at the same time. Their holidays are too few and their work heavy and monotonous. It makes them nervous and irritable. The depressed and worried woman loses her appetite and grows thin and feeble. Once in a while she has spells of palpitation and has to lie up for a day or two. If some disease like influenza or malarial fever happens to prevail she is almost certain to have an attack of it, and that often paves the way for chronic troubles of the throat, lungs and other organs; and there is no saying what the end may be. Let the tired and overladen woman rest as much as possible; and, above all, place at her command a bottle of WAMPOLE'S PREPARATION

a true and sure remedy for the ills and maladies of women. It is palatable as honey and contains all the nutritive and curative properties of Pure Cod Liver Oil, combined with the Compound Syrup of Hypophosphites and the Extracts of Malt and Wild Cherry. Search the world over and you will find nothing to equal it. Taken before meals it improves the nutritive value of ordinary foods by making them easier to assimilate, and has carried hope and good cheer into thousands of homes. It is absolutely reliable and effective in Nervous Dyspepsia, Impaired Nutrition, Low Vitality, Wasting Conditions, Melancholy, Chlorosis, Scrofula, and all troubles of the Throat and Lungs. Dr. E. J. Boyes says: "I have found it a preparation of great merit. In a recent case a patient gained nearly twenty pounds in two months' treatment, in which it was the principal remedial agent." It carries the guarantee of reliability and cannot fail or disappoint you. At chemists.

Announcement  
of Auctions

## Auction Sale

FRIDAY, AUGUST 26, 1904,  
AT 10 O'CLOCK A. M.

Entire Furniture  
OF  
Hotel Metropole

Alakea Street, bet. Hotel and Beretania.  
Dealers, Hotel-keepers, Individual Buyers, Attention! You can furnish your house entirely at one sale.

I will sell on Friday, 26 August, at 10 o'clock a. m., the whole of the clean, nearly new, furniture in above hotel.  
Iron Bedsteads, Bureaus,  
Oak Bedsteads, Cheffoniers,  
Mattresses, Wardrobes,  
Oak Chairs, Tables,  
Oak Rockers, Washstands,  
Wicker Rockers, Box Couches,  
Electric 3 prong Chandelier, Pictures,  
Hair Mattresses, Portieres,  
Lace Curtains, Blinds,  
Mosquito Nets, Matting,  
Rugs, Stair Carpet,  
Linen Sheets, Pillow Cases,  
Comforters, Spreads, Blankets,  
Towels, Plates, Dishes, Crockery,  
Bedroom Crockery, Enamelware, Ware,  
Sideboard, Dining Table,  
Outside Shades, Screen Doors,  
Window Screens, Elegant Stove,  
Roller Top Desk, Etc., Etc.

JAS. F. MORGAN,  
AUCTIONEER.

## Auction Sale

ON SATURDAY, AUGUST 27.

## Stocks! Stocks!!

At my salesroom, 857 Kaahumanu street, I will sell at 12 o'clock noon,  
10 SHARES HALL & SON, LTD.  
SEVEN SHARES PACIFIC HARDWARE CO., LTD.

JAS. F. MORGAN,  
AUCTIONEER.



## AT AUCTION

Castle & Cooke, Ltd.  
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The Waimea Sugar Mill Co.  
The Fulton Iron Works, St. Louis.  
The Standard Oil Co.  
The George F. Blake Steam Pumps.  
Weston's Centrifugals.  
The New England Mutual Life Insurance Co., of Boston.  
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The Alliance Assurance Co., of London.

## M. S. Grinbaum &amp; Co

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Smoking Tobacco. 5c. and 10c. Packages.

## Agents for

BRITISH AMERICAN ASSURANCE COMPANY, of Toronto, Ontario.  
DELAWARE INSURANCE CO., of Philadelphia.

## W. W. AHANA &amp; CO.

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Waity Building, King St.  
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## EAGLE CLEANING AND DYEING WORKS

Fort Street, opposite Star Block.

LADIES' AND GENTS' CLOTHING  
CLEANED AT LOWEST  
PRICES.  
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A full stock of the famous Berkshire typewriter papers can now be found at either store of the

Hawaiian News Company.

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COMPANY.

Machinery, Black Pipe, Galvanized Pipe, Boiler Tubes, Iron and Steel, Engineers' Supplies.  
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Home Bakery

Beretania St., near Emma.  
All kinds of HOME BAKING made from only the BEST MATERIALS.  
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Carpentry of all kinds attended to. Give us a call.

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MERCHANT TAILORS.  
Expert cutter, formerly with J. D. Tregloan. Cleaning and repairing a specialty.

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36 and 38 N. King Street.  
Importers and Dealers in Chinese Silks, Fine Mattings, Teas, Ebony Furniture, Bamboo Stools, Rattan Arm Chairs.  
Grass Linens, and color, at very low prices.

Courteous treatment.  
Prompt attention.  
Best Quality and lots more at

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ENGINEERS AND GENERAL CONTRACTORS.  
Plans and Estimates furnished for all classes of Contracting Work.  
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R. H. PEASE, President,  
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